

PUBLIC LAW BOARD NO. 2444

Award No. 70

Case No. 84

Docket No. MW-81-127

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Southern Pacific Transportation Company
(Texas and Louisiana Lines)

Statement

of Claim: Claim of BMW and E. J. Massey for reinstatement to the position of Track Foreman and pay for the difference in the rate of a Laborer/Driver and that of a Track Foreman from July 20, 1981 until he is reinstated and assigned as a Foreman, with seniority rights, vacation and all other rights unimpaired, allegedly unjustly dismissed:

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated July 19, 1979, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant was advised under date of April 30, 1981 by Regional Maintenance of Way Manager E. L. Alcalá in part as follows:

"On April 23, 1981 you were instructed by District M/W Manager A. E. Bigler to unload four cars of walkway material on the House Track in Fort Worth Yard.

Apparently a broken rail developed under one of the cars and a switch engine was cut away from the cars in order to repair the broken rail. When the engine cut away from the cars they set the hand brakes and left air in the cars. Engine Foreman T. C. Tanner told you not to let all the hand brakes off unless the air off the cars that the cars would roll you would not be able to stop them.

After switch engine had cut off from the cars and Mr. Tanner told you to not

let the air or hand brakes off you took it on your own to move the four cars in order to repair the broken rail. You released the air and the hand brakes off the car in order to let them roll past the broken rail. In doing this the cars rolled down the hill to the tail end of the house track next to the Freight Station where 7 vehicles were parked. The 4 cars of the walkway material struck these 7 vehicles causing very extensive damage to them.

Your action on April 23 is in violation of portions of Rule M and Rule M818 of the Rules and Regulations for the Maintenance of Way Instructions, which are quoted below.

'M. Carelessness by employees will not be condoned and they must exercise care to avoid injury to themselves or others.'

'M818. Foreman and others in charge of work are responsible for the safety of their men and must see that no unnecessary risks get taken. They shall bear in mind that safety is the first and most important consideration.'

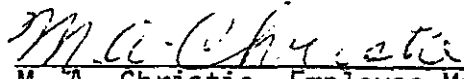
For your responsibility in connection with this incident you are hereby dismissed from service of the Southern Pacific Transportation Company..."

Claimant requested and was granted a hearing which was postponed three times and was finally held on June 11, 1981. As a result thereof, Carrier advised Claimant that the discipline assessed was being upheld.


The Board finds that there are circumstances which serve to mitigate the discipline assessed. Claimant will be reinstated to service with all rights unimpaired but without pay for time lost subject of course to passing the necessary return to work examinations.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.


M. A. Christie, Employee Member


C. B. Goyne, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued May 11, 1983.